

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Falcon Cablevision LP)	File No. EB-01-KC-679
Los Angeles, California)	NAL/Acct. No. 200232320001
)	FRN 0001-5308-72
)	
Charter Communications VI LLC)	File No. EB-01-OR-283
St. Louis, Missouri)	NAL/Acct. No. 200232320002
)	FRN 0001-6091-48
)	
Subsidiaries of Charter Communications)	
St. Louis, Missouri)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 23, 2002

Released: April 25, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find the captioned subsidiaries of Charter Communications (“Charter”) apparently liable for forfeitures totaling twenty-four thousand dollars (\$24,000) for willful violation of Section 76.605(a)(12) of the Commission’s Rules (“Rules”) relating to cable television signal leakage by Charter subsidiary Falcon Cablevision LP (“Falcon”), and for repeated and willful violation of the same section by Charter subsidiary Charter Communications VI LLC (“Charter VI”).¹

2. We find that during the period from May 9, 2001, through October 13, 2001, the captioned Charter subsidiaries apparently violated Section 76.605(a)(12) of the Rules (excessive cable television signal leakage) in two locations in different parts of the country.

3. The apparent violations here come within six months following a notification of a similar prior cable leakage violation by captioned Charter subsidiary, Charter VI.² They also come within approximately six months following notification of a similar prior cable leakage violation by Charter subsidiary Falcon Cable Media. Our rules relating to cable leakage are important to public safety. The apparent inability of

¹ 47 C.F.R. § 76.605(a)(12)

² See ¶ 5 and note 13, *infra*.

Charter's subsidiaries to comply with these rules on a consistent basis causes a significant concern that Charter is not exercising adequate oversight. Future violations may lead to significantly stronger enforcement action.

II. BACKGROUND

4. The Commission has established cable signal leakage rules to control emissions that could cause interference to aviation frequencies from cable systems. Protecting the aeronautical frequencies³ from harmful interference is of paramount importance.⁴ To this end, the Commission established basic signal leakage standards.⁵ The Commission has determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways. Signal leakage levels that exceed these thresholds are considered harmful interference. First, leakage must not exceed 20 microvolts per meter ("µV/m") at a distance of at least three meters from the leak.⁶ Second, the Commission set basic signal leakage performance criteria for the system as a prerequisite for operation on aeronautical frequencies. This is the system's Cumulative Leakage Index ("CLI"). The Commission requires annual measurement of each system's CLI to demonstrate safe levels of signal leakage,⁷ the results of which must be reported to the Commission.⁸ The Commission also requires routine monitoring of the system to detect leaks.⁹ Whenever harmful interference occurs, the cable system operator must eliminate it.¹⁰ Further, should the harmful interference not be eliminated, the Commission will intervene and require suspension of operation of the portion of the system involved or

³ The aeronautical bands are 108-137 MHz and 225-400 MHz. These frequencies encompass both radionavigation frequencies, 108-118 MHz and 328.6-335.4 MHz, and communications frequencies, 118-137 MHz and 225-328.6 MHz and 335.4-400 MHz. Deserving particular protection are the international distress and calling frequencies 121.5 MHz, 156.8 MHz, and 243 MHz. *See* 47 C.F.R. §76.616. These frequencies are critical for Search and Rescue Operations including use by Emergency Locator Transmitters (ELT) on planes and Emergency Position Indicating Radio Beacons (EPIRB) on boats. *See generally* 47 C.F.R. Part 80, Subpart V and 47 C.F.R. §§ 87.193-87.199.

⁴ Harmful Interference includes any interference that "endangers the functioning of a radionavigation service or of other safety services." *See* 47 C.F.R. §§ 2.1 & 76.613(a).

⁵ *Memorandum Opinion and Order, Amendment of Part 76 of the Commission's Rules to Add Frequency Channelling Requirements and restrictions and to require Monitoring for Signal Leakage from Cable Television Systems*, Docket No. 21006, 101 F.C.C.2d 117, para. 14 (1985) [hereinafter MO&O].

⁶ 47 C.F.R. §76.605(a)(12).

⁷ 47 C.F.R. §76.611(a).

⁸ 47 C.F.R. §76.1804(g).

⁹ 47 C.F.R. §76.614.

¹⁰ 47 C.F.R. §76.613(b).

reduction of power¹¹ below the levels specified in Section 76.610 of the Commission's Rules.¹²

5. Commission field agents regularly inspect cable television systems to determine compliance with the Commission's cable signal leakage rules. On April 17, 18 and 27, 2000, an agent from the Commission's Denver, Colorado, Field Office ("Denver Office") inspected a cable system operated by captioned Charter subsidiary, Charter VI in Burlington, Colorado. On each of those dates the agent determined that cable signal leakages exceeded 20 $\mu\text{V}/\text{m}$ at a distance of at least three meters from each leakage, in violation of Section 76.605(a)(12) of the Rules. On April 17, 2000, the agent also found that the system did not conform to the cumulative signal leakage performance criteria, in violation of Section 76.611(a) of the Rules. On April 18, 2000, the agent determined that Charter VI had failed to comply with a directive to cease operation on aeronautical frequencies or reduce power until cable signal leakages were repaired. These violations resulted in an Official Notice of Violation ("NOV") against Charter VI issued on June 7, 2000, and a \$20,000 *NAL*¹³ released on April 16, 2001. Additionally, on March 21, 2001, an agent from the Commission's Atlanta, Georgia, Field Office ("Atlanta Office") inspected a cable system operated by a Charter subsidiary, Falcon Cable Media, in Lake Park, Georgia. The agent determined that, at 16 locations, cable signal leakage on 127.225 and 127.2625 MHz exceeded 20 $\mu\text{V}/\text{m}$ at a distance of at least three meters from the leakage. On April 9, 2001, the Atlanta Office issued an NOV to Charter as the parent of Falcon Cable Media citing violation of Section 76.605(a)(12). In its April 16, 2001, reply to the NOV, Charter stated that its technician repaired the leakages on March 22, March 26, and April 5, 2001.

6. In the past year, Commission field agents have issued two more NOVs to Charter for such violations by its subsidiaries. A brief description of these safety-related violations, which are the subject of this NAL, follows:

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7. On May 9, 2001, an agent from the Commission's Kansas City, Missouri, Field Office ("Kansas City Office") inspected a cable system operated by a Charter subsidiary, Falcon, in Versailles, Missouri. The agent determined that, at eight locations, cable signal leakage on 133.2625 MHz significantly exceeded 20 $\mu\text{V}/\text{m}$ at a distance of at least three meters from the leakage. On May 10, 2001, the Kansas City Office issued an NOV to Charter as the parent of Falcon citing violation of Section 76.605(a)(12). In its May 18, 2001, reply to the NOV, Charter stated that its technician repaired the leakages on May 10, 2001.

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8. On October 10, 2001, an agent from the Commission's New Orleans, Louisiana, Field Office ("New Orleans Office") inspected a cable system operated by Charter VI in Columbia, Mississippi. The agent

¹¹ 47 C.F.R. §76.613(c).

¹² 47 C.F.R. §76.610.

¹³ *Charter Communications VI, LLC*, 16 FCC Rcd 8485 (Cable Services Bureau 2001), *response pending*.

determined that, at six locations, cable signal leakage on 133.2625 MHz significantly exceeded 20 μ V/m at a distance of at least three meters from the leakage. On October 12, 2001, the New Orleans Office issued an NOV to Charter as the parent of Charter VI citing violation of Section 76.605(a)(12). In its October 24, 2001, reply to the NOV, Charter stated that its technician repaired the leakages on October 10 and 13, 2001.

III. DISCUSSION

9. Based on the evidence before us, we find that Charter subsidiaries, Falcon and Charter VI, have apparently failed to limit the signal leakage from a cable television system to the specified amount, in willful violation of Section 76.605(a)(12).¹⁴ We note that the violations of Charter VI were continuing and thus also repeated.¹⁵

10. Section 503(b) of the Act,¹⁶ authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we must take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷

11. Excessive cable television signal leakage in the aeronautical bands constitutes harmful interference to distress and safety frequencies.¹⁸ Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)¹⁹ and Section 1.80 of the Rules,²⁰ the base forfeiture amount for violations of rules relating to distress and safety frequencies is \$8,000 per violation. Application of the base amount to the captioned Charter subsidiaries’ violations results in a base forfeiture amount of \$8,000 for each. The total base

¹⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

¹⁵ See *id.* at 4388; as defined in the Act, the term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 U.S.C. § 503(b)(2)(D).

¹⁸ See, e.g., *Callais Cablevision, Inc.*, 16 FCC Rcd 1359, 1363 (2001), *response pending*.

¹⁹ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁰ 47 C.F.R. § 1.80.

forfeiture amount for violations by the captioned Charter subsidiaries is \$16,000.

12. We are concerned with the pattern of apparent violations by Charter's subsidiaries. We have previously stressed the importance of full compliance with the cable signal leakage rules because of the potential danger to air traffic safety.²¹ Failure to limit the signal leakage from cable television systems to the amount permitted by Section 76.605(a)(12) is a serious threat to air traffic safety.

13. We are also concerned that companies controlled by Charter continue to violate the cable leakage rules despite our notifying Charter of two prior instances of cable leakage violations by Charter subsidiaries Charter VI and Falcon Cable Media. The violations on which this *NAL* is based occurred approximately six months or less after the notifications. The multiple violations of the cable signal leakage requirements evince a pattern of non-compliance with the rules. Accordingly, we believe an upward adjustment of the base forfeiture amount is warranted.²² Applying the *Forfeiture Policy Statement*²³ and statutory factors²⁴ (e.g., nature, extent and gravity of the violation and the history of prior offenses) to the instant case, we find that the proposed forfeiture amounts for the Section 76.605(a)(12) violations by Falcon and Charter VI should be \$12,000 each – 50% greater than the base amount.²⁵

14. Based on the above, we find Falcon and Charter VI apparently liable for a forfeitures in the amount of \$12,000 each. The total amount of these proposed monetary forfeitures to the captioned Charter subsidiaries is \$24,000.

IV. ORDERING CLAUSES

²¹ Cf. *Callais Cablevision, Inc.*, *supra*, at 1359-1360 (*NAL* issued for violation of Sections 11.11, 76.605(a)(12), 76.611(a) and 76.612 of the Rules).

²² Cf., *American Tower*, 16 FCC Rcd at 1285 (base forfeiture amount doubled); *TeleCorp Communications, Inc.*, 16 FCC Rcd 805, 807 (Enf. Bur. 2001) (base forfeiture amount doubled). We note that our concern is with the underlying facts of these prior violations, not the fact that we issued an *NAL* with respect to some of these prior violations. See *Forfeiture Policy Statement*, *recon.* at 303-305.

²³ See also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁴ See 47 USC § 503(b)(2)(D).

²⁵ Falcon and Charter VI are subsidiaries of Charter. When Charter responded to the NOV's issued on May 10 and October 12, 2001, it identified each (Falcon and Charter VI) as "an entity of Charter." In addition, a filing by Charter with the Securities Exchange Commission identifies Falcon and Charter VI as Charter subsidiaries (Form 10-K405, Exhibit 21.1, filed March 29, 2002). The violations by Falcon's sister company, Charter VI, are also part of Falcon's violation history. See, e.g., *Mega Communications of St. Petersburg, Licensee, Inc.*, 16 FCC Rcd 16662 (Enf. Bur., 2001); *KGNT, Inc.*, 16 FCC Rcd 4656 (Enf. Bur., 2001); *Capstar Limited Partnership*, 16 FCC Rcd 901 (Enf. Bur., 2001).

15. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, each of the captioned subsidiaries is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE as follows:

(a) Falcon Cablevision LP in the amount of twelve thousand dollars (\$12,000) for willfully violating Section 76.605(a)(12) of the Rules; and

(b) Charter Communications VI LLC in the amount of twelve thousand dollars (\$12,000) for willfully and repeatedly violating Section 76.605(a)(12) of the Rules.

16. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, each of the captioned subsidiaries SHALL PAY the full amount of its proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of its proposed forfeiture.²⁶

17. Payment of the forfeitures may be made by mailing (a) check(s) or similar instrument(s), payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment(s) should note the following:

(a) Falcon -- NAL/Acct. No. 200232320001 and FRN 0001-5308-72; and

(b) Charter VI -- NAL/Acct. No. 200232320002 and FRN 0001-6091-48.

A request for payment of the amounts related to the *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, DC 20554.²⁷

18. The response(s), if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division. The response(s) must include the NAL/Acct. Nos. and FRN numbers specified in Paragraph 17, above.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

²⁶ Alternatively, Charter may pay the full amount of the captioned subsidiaries’ proposed forfeitures or file a written statement on behalf of the captioned subsidiaries seeking reduction or cancellation of the proposed forfeitures.

²⁷ See 47 C.F.R. § 1.1914.

20. IT IS FURTHER ORDERED THAT copies of this *NAL* shall be sent by Certified Mail, Return Receipt Requested, to Charter Communications and Charter Communications VI LLC at 12444 Powerscout Drive, Suite 100, St. Louis, Missouri 63131; and to Falcon Cablevision LP at 10900 Wilshire Boulevard, Suite 1500, Los Angeles, California 90024.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau